IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2237 OF 2007

Sarkar Ganu Gosavi ....Petitioner
V/s.
The State of Maharashtra & Ors. ....Respondents

Mr.S.S. Patwardhan for the Petitioner.
Mr.V.A. Sonpal, AGP for Respondent Nos.1, 3 and 4.

CORAM : F.I. REBELLO &
R.M. SAVANT, JJ.
DATED : 10TH APRIL, 2007.

P.C. :

1. Rule. Heard forthwith.

2. The Petitioner was one of the candidates for the elections which were held to constitute Ichalkaranji Municipal Council. One of the Petitioner's opponent was Imran Bashir Haveri, who secured 1239 votes. The Petitioner secured 967 votes. The said seat was reserved for O.B.C. category. The Petitioner belongs to O.B.C. category. Shri Haveri also claims to be belonging to O.B.C. category. The Petitioner challenged the election of Shri Haveri by an Election Petition on several grounds. One of the grounds was that Shri Haveri did not belong to O.B.C. category. The reliefs sought by the Petitioner were

to declare the election of the said Shri Haveri as null and void and for a further declaration that the Petitioner could be declared as elected. During the pendency of the Petition, the caste scrutiny committee invalidated the caste claim of the aforesaid Shri Haveri. According to the Petitioner, considering that prayer (a) in the Election Petition would become infructuous. However, prayer (b) would survive. In the meantime, Respondent No.2 has proposed to hold bye election on account of the vacancy and has issued a notification on 15.3.2007 which includes the vacancies of the members of Ichalkaranji Municipal Council.

3. On behalf of the Petitioner, the learned counsel for the Petitioner relies on the judgment of the Supreme Court in *D. Sanjeevayya vrs. The Election Tribunal, Andhra Pradesh and others, AIR 1967 SC 1211*. In that case the election as M.L.A. was challenged by an Election Petition. A relief was also sought for declaring the Petitioner therein to be elected. In the meantime, the candidate who was elected resigned causing thereby vacancy. Pursuant to that, the seat was sought to be filled in. A contention was urged that merely because the elected candidate had resigned, cannot defeat the Election Petition and the prayer sought by the Petitioner

there, that he should be declared to be elected. The Supreme Court considering the terminology in the provisions of Representation of the People Act was pleased to hold that if the Election Commission approach the constituency to elect a person then the Petitioner's Petition would be rendered infructuous as even if he succeeds, there will be no seat available to which the Petitioner could be declared to be elected. The Supreme Court was considering the language of Section 150(1) of the Representation of the People Act. In that circumstance, though the High Court rejected the relief, the Hon'ble Supreme Court was pleased to issue a writ of mandamus to the Election Commission not to proceed with holding of the elections to the vacancy caused. The terminology used under Section 150(1) of the Representative of Peoples Act and Section 48 of the Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965 is more or less similar.

4. The Respondents have been unable to show any judgment of the Supreme Court which have reconsidered the judgment in *D. Sanjeevayya (supra)*. In the light of that, in our opinion the ends of justice would be met if this Petition is disposed of in the following manner :-

i). Rule is made absolute in terms of (a). The learned District Judge, Ichalkaranji is directed to dispose of the Election Petition at any rate not later than four months from today.

ii). In the meantime and till such decision the Election Commission not to proceed to fill in the vacancy caused by the disqualification of the Petitioner.

iii). Rule is accordingly made absolute, with no order as to costs.

5. We make it clear that the candidate who has been disqualified, challenge the order of the Caste Scrutiny Committee that would be considered independently and this order will not stand in his way.

(R.M. SAVANT, J.) (F.I. REBELLO, J.)